

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

PERIODIC REPORTING  
(PROPOSAL FIVE)

Docket No. RM2018-8

**UNITED STATES POSTAL SERVICE RESPONSE TO  
UNITED PARCEL SERVICE INC.'S MOTION REQUESTING ACCESS TO  
NON-PUBLIC MATERIALS UNDER PROTECTIVE CONDITIONS**  
(July 27, 2018)

For the reasons described below, the United States Postal Service ("Postal Service") opposes the United Parcel Service (UPS) Motion Requesting Access to Non-Public Materials Under Protective Conditions (UPS Motion), which concerns nonpublic information included in USPS-RM2018-8/NP1.<sup>1</sup> In view of the potential risks and harm to the Postal Service and its business relationships, as well as potential harm to the third-party interests of its business partners, the Postal Service objects to the Commission granting UPS representatives access to the vast amount of nonpublic postal and third-party confidential and commercially sensitive information provided within USPS-RM2018-8/NP1. On that basis, the Postal Service submits that the Commission should deny the UPS Motion.

Nonetheless, the Postal Service is also concurrently submitting an alternative set of nonpublic materials in USPS-RM2018-8/NP3,<sup>2</sup> and the Postal Service has no objection to the Commission granting access by qualified UPS representatives under

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<sup>1</sup> United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, Docket No. RM2018-8, July 20, 2018 ("UPS Motion").

<sup>2</sup> Postal Service, Notice of Filing of USPS-RM2018-8/NP3 and Application for Nonpublic Treatment, Docket No. RM 2018-8, July 27, 2018.

the standard protective conditions to that material. If UPS seeks and obtains access to USPS-RM2018-8/NP3, the Postal Service maintains that UPS would have enough information to fulfill the objective identified in its motion, i.e., “sufficient information to offer useful comments on RM2018-8.”<sup>3</sup>

As background, on July 20, 2018, UPS filed a motion for access pursuant to Commission Rules 3001.21 and 3007.40, seeking access under protective conditions to USPS-RM2018-8/NP1, which the Postal Service filed with the Commission on June 26, 2018.<sup>4</sup> In its filing, the Postal Service noted that:

[t]he material contained in the nonpublic folder includes information regarding International products of the type provided under seal within USPS-FY17-NP2 and NP4 in the FY17 Annual Compliance Report, as well as further analysis of that material. The Postal Service therefore incorporates by reference the Application for Non-Public Treatment of Materials contained in Attachment Two to the United States Postal Service Fiscal Year 2017 Annual Compliance Report, filed on December 29, 2017, including the designation of the same third parties as designated for USPS-FY17-NP2. Also incorporated by reference are the related Applications for Non-Public Treatment of Materials from that docket submitted in conjunction with USPS-FY17-NP31 (January 12, 2018) and USPS-FY17-NP40 (February 14, 2018).<sup>5</sup>

UPS represents that it “does not seek and has no interest in obtaining customer-specific or sensitive third-party information.”<sup>6</sup> In an attempt to resolve this controversy, the Postal Service is today filing USPS-RM2018-8/NP3, which excludes identified third party information, and shows the pre- and post-implementation scenarios resulting from the change proposed by the Postal

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<sup>3</sup> UPS Motion, at 1.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Postal Service, Notice of Filing of USPS-RM2018-8/NP1 and Application for Nonpublic Treatment, Docket No. RM2018-8, June 26, 2018.

<sup>6</sup> UPS Motion, at 1.

Service that is the subject of this docket. We submit that if UPS is granted access under protective conditions to USPS-RM2018-8/NP3, this would enable UPS to make informed comments regarding the Postal Service's petition in this docket.

The Postal Service has consulted with third parties listed in Appendix 1 of the application for nonpublic treatment that the Postal Service filed in the ACR2017 docket that are affected by the UPS Motion, because information specific to foreign postal operators is included in the materials in question.<sup>7</sup> As of the time of this filing, the Postal Service has received an expression of concern from two business partners regarding potential UPS access to the information included in Nonpublic Folder USPS-RM2018-8/NP1. In the letter included as Attachment 1 to this filing, Canada Post Corporation ("Canada Post") describes its concerns related to the potential disclosure of nonpublic information filed in this docket prior to July 23, 2018. In its letter, Canada Post supports the Postal Service's opposition to the Commission granting the UPS Motion, and articulates many of the views expressed by the Postal Service in this filing and in its applications for non-public treatment. Canada Post's letter cites "the seriousness and significance of the impact on [Canada Post]'s revenues and legitimate commercial interests of improper disclosure of its commercially-sensitive information, which [Canada Post] strongly believes would not be adequately protected by the Protective Conditions proposed by the ... UPS Motion, especially considering the lack of enforcement tools for [Canada Post]."

The materials that are the subject of the UPS Motion are confidential and

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<sup>7</sup> See Postal Service, FY2017 Annual Compliance Report, Docket No. ACR2017, December 29, 2017, Attachment Two, Appendix 1.

commercially sensitive, as outlined in the Postal Service's application for nonpublic treatments listed in its filing of USPS-RM2018-8/NP1.<sup>8</sup> The nonpublic materials contained in USPS-RM2018-8/NP1 include information regarding international products of the type provided under seal within USPS-FY17-NP2 in the ACR2017 docket, and are described in detail in those applications filed in Docket No. ACR2017. Furthermore, these materials are information of a commercial nature, which under good business practice would not be publicly disclosed. As such, this information normally would be exempt from mandatory public disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4). Moreover, this information is confidential within the broader shipping services market.

Disclosure of the requested nonpublic materials could have a negative effect on the Postal Service's business as a whole, as well as the Postal Service's ability to compete in the shipping services market. The Postal Service would be at a disadvantage if other companies were forced to accept an uncertain risk that information specific to them would be shared with third parties or their representatives, particularly a major competitor and supplier in the shipping industry. The Postal Service is concerned that were UPS granted access with respect to Nonpublic Folder USPS-RM2018-8/NP1, the outcome could have an adverse effect on third-party interest in pursuing business with the Postal Service. In turn, the Postal Service would suffer

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<sup>8</sup> The Postal Service herein incorporates by reference its arguments, and the identified harms that would arise from disclosure of these materials, which are contained in the Postal Service's applications for nonpublic treatment in this docket listed in Postal Service, Notice of Filing of USPS-RM2018-8/NP1 and Application for Nonpublic Treatment, Docket No. RM2018-8, June 26, 2018.

potential loss of business and damaged business relationships that would result in negative effects on the Postal Service's shipping services business.

Furthermore, Proposal Five is a very simple proposal, concerning an accounting exercise to split aggregate information into two components. As a result, UPS does not need access to the full range of information in USPS-RM2018-8/NP1 in order to have sufficient information to offer useful comments in this docket.

Although UPS may find comfort in the fact that UPS representatives are willing to execute certifications representing their willingness to use the nonpublic materials solely for participation in this docket, and assert that they are not involved in competitive decision-making, the risk of inadvertent disclosure exists, and, in the event inadvertent disclosure occurs, there are practically no enforcement tools and other protections available to third parties.

In view of the potential risks and harm to the Postal Service and its business relationships, as well as potential harm to the third-party interests of its business partners, the Postal Service objects to the Commission granting UPS representatives access to the vast amount of nonpublic postal and third-party confidential and commercially sensitive information provided within USPS-RM2018-8/NP1. On that basis, the Postal Service submits that the Commission should deny the UPS Motion.

Nonetheless, as stated above, the Postal Service is also concurrently submitting an alternative set of nonpublic materials in USPS-RM2018-8/NP3,<sup>9</sup> and the Postal Service has no objection to the Commission granting access by qualified UPS representatives under the standard protective conditions to that material. If UPS seeks

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<sup>9</sup> Postal Service, Notice of Filing of USPS-RM2018-8/NP3 and Application for Nonpublic Treatment, Docket No. RM 2018-8, July 27, 2018.

and obtains access to USPS-RM2018-8/NP3, the Postal Service maintains that UPS would have enough information to fulfill the following objective identified in the UPS motion: “sufficient information to offer useful comments on RM2018-8.”<sup>10</sup>

Therefore, as a compromise measure, the Postal Service respectfully suggests that UPS seek access to USPS-RM2018-8/NP3, review that material pursuant to the protective conditions, and then inform the Commission whether UPS is willing to withdraw its request for access to USPS-RM2018-8/NP1 and rely instead on the USPS-RM2018-8/NP3 material. Under such circumstances, it would seem reasonable for the Commission to hold the UPS Motion in abeyance pending further action by UPS.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>10</sup> UPS Motion, at 1.

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Via electronic mail

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**Re. UPS Motion for Access to Non-public Material Containing Third Party Information in PRC Docket No. RM2018-8**

Dear Mr. Meyerson,

Canada Post Corporation (CPC) appreciates the efforts of USPS to oppose those elements of the above UPS Motion pertaining to third-party information. Given the magnitude of the parcel flows between USPS and CPC; and the highly competitive nature of the United States/Canada cross-border parcels business; and the seriousness and significance of the impact on CPC's revenues and legitimate commercial interests of improper disclosure of its commercially-sensitive information, which CPC strongly believes would not be adequately protected by the Protective Conditions proposed by the above UPS Motion, especially considering the lack of enforcement tools for CPC; CPC most emphatically supports USPS' position requesting the PRC to order that UPS should be denied access to the non-public material set forth in PRC Docket No. RM2018-8.

Thank you.

Yours sincerely,



Joanna Hatt  
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JH/dlr